

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 8:022. Sanitary surveys.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 142.10(b)(2), 142.16(b), EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 C.F.R. 142.10(b)(2), 42 U.S.C. 300f, 300g, 300h, 300j

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the requirements ~~[of a systematic program]~~ for conducting sanitary surveys ~~[by the cabinet]~~ and requirements on the public water system subject to a sanitary survey.

Section 1. ~~[Applicability.]~~ (1)~~(a)~~ The cabinet shall conduct a sanitary survey of a public water system in accordance with the requirements of 40 C.F.R. 142.16(b)(1)(ii), (iii), and 142.16(b)(3) for systems using surface water as a source.

(2) The cabinet shall conduct a sanitary survey of a public water system in accordance with the requirements of 40 C.F.R. 141.400, 141.401, 141.403 and 142.16(o) for systems

1 using groundwater as a source. ~~[that uses as its source surface water or groundwater under the~~
2 ~~direct influence of surface water and prepare a report of the sanitary survey, according to the~~
3 ~~requirements of this administrative regulation.~~

4 ~~(b) The sanitary survey and report of the survey shall be consistent with the guidelines of~~
5 ~~"Guidance Manual for Conducting Sanitary Surveys of Public Water Systems; Surface Water and~~
6 ~~Ground Water Under the Direct Influence (GWUDI)", incorporated by reference in Section 5 of~~
7 ~~this administrative regulation.~~

8 ~~(c) The priority for conducting the surveys shall be given to public water systems that are not in~~
9 ~~compliance with 401 KAR Chapter 8 and according to the frequency in Section 3 of this~~
10 ~~administrative regulation.~~

11 ~~(2) A public water system that receives a sanitary survey report prepared by the cabinet shall~~
12 ~~comply with the requirements of this administrative regulation.~~

13 ~~Section 2. Sanitary Survey Contents. (1) The survey shall contain an evaluation of the~~
14 ~~adequacy of the system, its sources and operations, and the distribution of safe drinking water. The~~
15 ~~survey shall include an on-site review of a public water system's:~~

16 ~~(a) Water source, identifying sources of contamination using results of a source water~~
17 ~~assessment if available;~~

18 ~~(b) Facilities;~~

19 ~~(c) Equipment;~~

20 ~~(d) Operation;~~

21 ~~(e) Maintenance; and~~

22 ~~(f) Monitoring compliance.~~

23 ~~(2) The sanitary survey and the resultant report shall address the following components:~~

- 1 ~~(a) Source;~~
- 2 ~~(b) Treatment;~~
- 3 ~~(c) Distribution system;~~
- 4 ~~(d) Finished water storage;~~
- 5 ~~(e) Pumps, pump facilities, and controls;~~
- 6 ~~(f) Monitoring, reporting, and data verification including a disinfection profile, if the system is~~
7 ~~required to have a disinfection profile pursuant to 401 KAR 8:160;~~
- 8 ~~(g) System management and operation; and~~
- 9 ~~—(h) Operator certification compliance with requirements of 401 KAR 8:030.~~

10 Section 3. Frequency. ~~(1) Except as provided by subsection (2) of this section, the cabinet shall~~
11 ~~conduct a sanitary survey and prepare a report on the survey at the following frequencies:~~

12 ~~(a) Community water system that uses as its source surface water or groundwater under the~~
13 ~~direct influence of surface water: no less frequently than every three (3) years.~~

14 ~~(b) Noncommunity water system that uses as its source surface water or groundwater under the~~
15 ~~direct influence of surface water: no less frequently than every five (5) years.~~

16 ~~(2) A community water system may be determined by the cabinet to have outstanding~~
17 ~~performance based on previous sanitary surveys. Systems judged to have outstanding performance~~
18 ~~may have sanitary surveys performed by the cabinet after no more than five (5) years.~~

19 ~~Section 4.]~~ Section 2. System Requirements. (1) ~~[If the cabinet identifies a significant~~
20 ~~deficiency of a public water system in a sanitary survey report, the public water system shall:~~

21 ~~(a) Correct or otherwise address the significant deficiency within forty five (45) days of~~
22 ~~receiving the report or within a time frame otherwise set by the cabinet; and~~

23 ~~(b) Submit to the cabinet within forty five (45) days of receipt of the report a [an approvable]~~

1 ~~written plan that describes how and on what schedule the significant deficiency shall be corrected~~
2 ~~or otherwise addressed. If the cabinet approves the plan, the system shall implement the provisions~~
3 ~~of the approved plan to the extent it is able to correct the significant deficiency.~~

4 (2) If the cabinet identifies a deficiency of a public water system in a sanitary survey report
5 that is not significant, the public water system shall correct or otherwise address the deficiency.

6 (2) [(3)] A deficiency shall be a significant deficiency if:

7 (a) It is part of a recurring pattern of noncompliance with the administrative regulations in 401
8 KAR Chapter 8;

9 (b) It poses a potential threat to public health or safety; [or]

10 (c) The system fails to implement the items identified in a Compliance Correction Program,
11 pursuant to 40 C.F.R. 142.16(g)(1); or

12 (d) The deficiency is identified as significant pursuant to the requirements of 40 C.F.R.
13 142.16(o)(2)(iv).

14 [Section 5. Incorporation by Reference. (1) "Guidance Manual for Conducting Sanitary
15 Surveys of Public Water Systems; Surface Water and Ground Water Under the Direct Influence
16 (GWUDI), EPA 815-R-99-016, 1999" is incorporated by reference. The document is published by
17 the U.S. Environmental Protection Agency, Office of Water, Washington, D.C. and is available by
18 calling the Safe Drinking Water Hotline at 1-800-426-4791.

19 (2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at~~
20 ~~Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday~~
21 ~~through Friday, 8 a.m. to 4:30 p.m.]~~

401 KAR 8:022 Sanitary Surveys approved for promulgation:

Date

Henry “Hank” List, Deputy Secretary, FOR
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 16, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 8:022

Contact Person: Peter T. Goodman, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation creates requirements for sanitary surveys on water systems using both surface water and groundwater as a source.
- (b) The necessity of this administrative regulation:** KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100(28) and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. This administrative regulation sets forth requirements for sanitary surveys for public water systems using both surface and ground water as a source.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** Sanitary surveys of public water systems assure that regulatory requirements are being carried out and that the public water system is in good repair and capable of continuing to treat and purify water for public use.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** The amendments to this administrative regulation remove federal language from the state regulation and substitute federal citations. In addition, the amendments to this regulation extend sanitary survey requirements to public water systems using groundwater as a source.
- (b) The necessity of the amendment to this administrative regulation:** KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 40 C.F.R. 141.400, 141.401, and 142.16(o), require public water systems using groundwater to undergo sanitary surveys, and require the cabinet to have the legal authority to require public water systems using groundwater to correct significant deficiencies. The amendments to this administrative regulation extend sanitary survey requirements to public water systems using groundwater.
- (c) How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. The amendments to this administrative regulation set forth requirements for sanitary surveys for public water systems using groundwater as a source.
- (d) How the amendment will assist in the effective administration of the statutes:** Sanitary surveys of public water systems assure that regulatory requirements are being carried out and that the public water system is in good repair and capable of continuing to treat and purify

water for public use.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** This administrative regulation affects 482 public water systems using surface or groundwater as a source. Specifically, it affects 150 systems that treat surface water, 176 systems that purchase from systems that treat surface water, 131 systems that treat groundwater and 25 systems that purchase from systems that treat groundwater.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Public water systems that have a significant deficiency identified by the cabinet during a sanitary survey must formulate and carry out a plan to correct the deficiency.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Public water systems that do not have deficiencies noted in a sanitary survey will have no cost as a result of the requirements of this regulation. Those that do have deficiencies will have costs that vary depending on the type of deficiency and how difficult it will be to correct.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** Public water systems will benefit from working with the cabinet to meet these requirements as opposed to having to answer to the U. S. Environmental Protection Agency if the cabinet fails to obtain primary enforcement responsibility for these rules. In addition, public water system customers will have the assurance of being served a high quality of water as a result of the system meeting the requirements of this administrative regulation.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

 - (a) Initially:** The cabinet already conducts sanitary surveys of public water systems. No additional cost will be realized.
 - (b) On a continuing basis:** There will not be additional costs.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?** The cabinet uses federal funds granted to carry out the provisions of the Safe Drinking Water Act.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** No additional fees or funding will be necessary.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:** No fees are established or directly or indirectly increased by the provisions of this administrative regulation.

(9) TIERING: Is tiering applied? (Explain why or why not)

Yes. This regulation applies to public water systems treating surface water or groundwater as well as those that purchase finished water for resale. There are somewhat different requirements for the two type sources it covers as well as for the extent/existence of treatment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 8:022

Contact Person: Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation applies to public water systems using surface water or groundwater as a source. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use, and for the construction and operation of water treatment systems and distribution systems. 40 C.F.R. 141.400, 141.401, 142.16(b), and 142.16(o) require surface water systems and groundwater systems to undergo sanitary surveys, and require the cabinet to have the legal authority to require the systems to correct significant deficiencies.

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? Sanitary surveys cost approximately \$1,400 each for both surface water and groundwater systems. The cabinet has been carrying out these surveys for many years. These costs would be incurred regardless of the amendment to this administrative regulation because the systems would be required to comply by the U. S. Environmental Protection Agency should the cabinet not obtain primary enforcement responsibility.

(d) How much will it cost to administer this program for subsequent years? The cabinet conducts approximately 90 surface water sanitary surveys each year, which costs approximately \$126,000 per year. Beginning in December 2009, the cabinet will conduct sanitary surveys on groundwater systems, increasing the amount of surveys to approximately 160 per year at an estimate of \$224,000 per year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 8:022

Contact Person: Peter T. Goodman, Assistant Director

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 141.400, 141.401, 142.16(b), and 142.16(o)

2. State compliance standards.

KRS 224.10-100, 224.10-110(2)

3. Minimum or uniform standards contained in the federal mandate.

40 C.F.R. 141.400, 141.401, 142.16(b) and 142.16(o) require public water systems using surface water or groundwater as a source to undergo sanitary surveys, and for the state to have legal or other authority to require such systems to address significant deficiencies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

The amendment to this administrative regulation does not introduce any requirements more stringent than the federal regulation. The regulation does, however, state explicitly what kind of deficiencies will be considered significant.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Public water systems will benefit by knowing what kind of deficiencies are considered significant. Additionally, this specificity complies with the requirements of KRS 13A.